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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-46

NEW ORLEANS STEAMSHIP ASSOCIATION,
Petitioner

v.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondents, General Longshore Workers I.L.A. Local Union 1418 and General Longshore Workers I.L.A. Local 1419, respectfully pray that the Petition for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered into this proceeding on April 4, 1973, be denied.

QUESTIONS PRESENTED

1. Whether intervening collective bargaining agreements between the parties since the issuance of the Arbitrator's decision and award have mooted this matter.

2. Whether this matter is now mooted because it does not involve real and substantial rights of the parties.

ADDITIONAL STATEMENT OF THE CASE

The arbitration award sought to be enforced in this matter was rendered on December 13, 1965. The grievances, the arbitration hearings, and the award grew out of and concerned the 1964-68 contract. This contract terminated on September 30, 1968. Following the expiration of the 1964-68 contract there were two periods when there was no contract in effect. The first period existed briefly on September 30, 1968 and the second period existed from on or about December 23, 1968 through the middle of February, 1969. During these two periods the defendant Unions were on strike for a new contract. In the middle of February, 1969 a new contract was consummated. This contract known as the 1968-71 contract terminated on September 30, 1971. Subsequent to September 30, 1971 for a period of time the Unions were on strike for a new contract, which when finally consummated covered the period October 1, 1971-September 30, 1974. This later contract is the one now in force and effect. The two contracts since 1964-68 have language not found in the 1964-68 contract or language that is different in that contract.

On or about September 3, 1970 the New Orleans Steamship Association, petitioner

herein, filed a complaint in the United States District Court for the Eastern District of Louisiana, New Orleans Division, styled New Orleans Steamship Association versus General Longshore Workers I.L.A. Local Union #1418 and General Longshore Workers I.L.A. Local Union #1419, CA No. 70-2554. The complaint stated that it was a suit based upon violation of and seeking performance of the contract between the plaintiff and the defendants. The 1968-71 contract was alleged. Plaintiffs then alleged that there had been numerous work stoppages in violation of the contract and alleged examples of such alleged work stoppages. The petitioner then requested that a temporary restraining order and later a preliminary and permanent injunction be issued restraining the defendant unions from their failure to take matters to grievance and engaging in work stoppages in lieu thereof. Hearings were held on September 10 and 18, 1970 before the Honorable James A. Comiskey, United States District Judge. At the end of the hearings on September 18, Judge Comiskey denied the request for the temporary restraining order as well as the preliminary and permanent injunction. The court instructed the parties to present the matters alleged in the complaint to an arbitrator (see appendix). Thereafter on October 14, 1971 the court issued its judgment in that case (see appendix).

REASONS FOR DENYING THE WRIT

1. THE DECISION BELOW ACKNOWLEDGES THAT THE ARBITRATION AWARD CEASED AT THE END OF THE COLLECTIVE BARGAINING AGREEMENT WHICH IT COVERED.

Since September 30, 1968 for the defendant

Unions have consistently taken the position that the decision and award of the arbitrator had been mooted with the expiration of the 1964-68 contract. The only vitality that the award had came from the contract between the parties. That contract was the 1964-68 contract. When that contract expired and where as here there was a long interval of time before a new contract was agreed to, the arbitration award expired on September 30, 1968. New life could not be given to the award simply because a new collective bargaining agreement was agreed to, even though the language which was the subject matter of the award was the same. There are many cases that hold that matters which arise between contracts or after the expiration of a contract are not arbitrable because the contract which gave life to arbitration is not in existence. Teamsters Local 612 v. Deaton Truck Line, Inc., CA 5 (1962) 307 F.2d 48, 51 LRRM 2137. Local 998 UAW v. B. & T. Metals Co. CA 6 (1963) 315 F.2d 432, 52 LRRM 2787. Flight Engineers v. Eastern Airlines CA 2 (1966) 359 F.2d 303, 62 LRRM 2374 and Teamsters Local 249 v. Kroger Company CA 3 (1969) 411 F.2d 1191, 71 LRRM 2479.

The defendant Unions were ordered to cease and desist from work stoppages that violated the 1964-68 contract. Even if that award had been judiciously enforced it could not have gone beyond September 30, 1968. The court would have only been enforcing the award to the limits contained within it and within the contract. Inasmuch as the contract expired, the court's mandatory injunction could only have gone as far as the award itself went, and this was until September 30, 1968. There could have been no prospective court remedy beyond that date.

A solid basis for the defendant Unions' argument is to be found in the award that is the subject matter of this case as well as the New Orleans Steamship Association's position as stated in that award. The arbitrator sets out the Association's position when it states, "The Association strongly argues that this Arbitrator should retain jurisdiction throughout the Contract so as to ascertain that his order is obeyed." When the Association took that position before the arbitrator it was fully aware that any award in its favor would live only as long as the contract. They were seeking to have that particular arbitrator police the award for the duration of the 1964-68 contract rather than turn to one of the other arbitrators on the panel. Whatever may have been the motive, the Association's argument shows that it understood that the award would last only through the 1964-68 contract.

More probative, and we believe determinative of this issue, is the holding of the arbitrator himself when he states, "It should be pointed out, however, that the cease and desist order is final and binding on the Unions for the duration of the Contract." It becomes obvious from this quotation that the award was only for the duration of the 1964-68 contract. We submit, therefore, regardless of what the law might be insofar as the life of an award past the life of a contract, the award here clearly and unequivocally states that it is to die with the 1964-68 contract. We therefore submit under these circumstances that the court below was eminently correct when it said the matter had been mooted.

2. THE DECISION BELOW ACKNOWLEDGES THAT THIS MATTER IS MOOT BECAUSE IT DOES NOT INVOLVE REAL AND SUBSTANTIAL RIGHTS OF THE PARTIES.

This is another instance where plaintiffs are reaching for the bottom of the barrel in order to continue an untenable situation of requesting the courts to maintain absolute supervision over contracts on the New Orleans water front. This case involves a situation that has long been terminated by the ending of a contract and the signing of two new contracts. To grant the request of plaintiff would be the enforcement of a contract no longer in existence. The effect would be to render the two subsequent contracts null and void and would be a vain and useless endeavor to require the enforcement of a contract no longer in existence.

The petitioner, by filing the September 3, 1970 complaint, was acknowledging that the instant case no longer had any vitality nor did it involve any real and substantial rights of the parties. Petitioner was aware that the instant case was pending before the district judge. Rather then going by motion on the alleged work stoppages to the district judge in the instant case, it chose to file a complaint seeking relief from the alleged work stoppages. This act by petitioner then effectively transferred its attempt to receive injunctive relief for the alleged work stoppages from the district judge below to another section of the same court, hence a different judge. It can be noted here that in the case bearing the number CA No. 70-2554, New Orleans Steamship Association has not diligently pursued its alleged rights. No appeal was taken and no other matter has been filed by petitioner before that particular district judge,

even though the district judge retained jurisdiction.

The cases cited by plaintiff are not in point and have no bearing on this case. For example, in U.S. v. W. T. Grant Co. 345 U.S. 629, the court acted on the Clayton Act which was an act still in existence. Here the contract sued upon is still in existence. The court did say on page 362, "For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right..." However, in the next sentence the court said, "The courts have rightfully refused to grant defendants such a powerful weapon against public law enforcement." (Underscoring ours).

CONCLUSION

It is respectfully submitted that for the reasons cited the writ of certiorari should not be issued to review the judgment and opinion of the Fifth Circuit, nor should the writ be granted on the fact of the papers. We further submit that the lower court's judgments should be left untouched.

Respectfully submitted,

Alvin J. Liska
Victor H. Hess, Jr.

By: _____
7952 Chef Menteur Highway
New Orleans, Louisiana 70126

October 16, 1973

CERTIFICATE

I hereby certify that on this 16th day of October, 1973 three copies of the Brief in Opposition to the Petition for Writ of Certiorari were mailed, postage prepaid to Andrew P. Carter, 1424 Whitney Building, New Orleans, Louisiana 70130.

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NEW ORLEANS STEAMSHIP ASSOCIATION, a Corporation	
VS.	NO. 70-2554
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and	SECTION 1(G)
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO	

Excerpts of testimony recorded in the above entitled matter held in the Court Room, 400 Royal Street, New Orleans, Louisiana 70130, on Friday, September 18, 1970, the HONORABLE JAMES A. COMISKEY, Judge Presiding.

APPEARANCES:

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New Orleans, Louisiana 70126,
Attorney for Local Union 1419.

REPORTED BY:

THOMAS H. CONRAD,
OFFICIAL COURT REPORTER.

- - - - -

BY THE COURT:

Well, here is my view on it, gentlemen:

Number one, I think that I will have to agree with what Mr. Taggart just said, that the intent and motive and purpose behind the deep sea agreement was to pormote labor harmony between the parties, the steamship companies and the longshoremen, but in an effort to have this harmony negotiated outside of the Court Room where frequently it can be worked out better because it's not as -- it's subject to more flexibility outside of the Court Room. I've got to assume that the parties to the deep sea agreement, in good faith, inserted Paragraph XVII, Roman Numeral XVII of the deep sea agreement with the intent that it would play a real important part in maintaining this peace and concord between the parties to the agreement.

I want this to be considered findings of

facts and conclusions of law. Now, as I read it, I am convinced that there are two apparently satisfactory methods of arbitration to resolve disputes in lieu of coming into the Court Room. One is the Section 17 (a), (b) and (c), steps 1, 2 and 3. But, then, there is the expedited arbitration procedure of Section D or, Paragraph D. It's admitted by all parties for all practical purposes that there has been no formalized attempt by plaintiff in this case to invoke arbitration procedure of either the second paragraph or, the D paragraph, (a), (b), (c), steps 1, 2, 3. There may have been, it might have gotten through step 1 in some cases, but not in all cases. I'm convinced from the evidence presented that the dispute with regard to the work stoppages and there are 12, does represent a dispute which is proper arbitrable under this deep sea agreement.

Now, whether or not, pending the arbitration, the plaintiff should be entitled to injunction against work stoppages, I would have to agree that the Boys Markets case had made a real dent in the jurisprudence, it overruled Sinclair. However, I will have to admit that the Boys Markets envisioned a situation where there was a particular violation of the contract which is not present in this case where the violation involved a strike and picketing, where there was a work stoppage, not a threat of one, but there was an existing viable actual work stoppage.

Now, the work stoppages complained of by the plaintiff here occurred over a period of 15 months. During the 15 months there were 12 work stoppages, and that the 12 work stoppages totaled a total of about 22 hours. I would say that each averaged about one hour and 40 minutes. If you really want to just

carry it down to percentages, I worked it out, out of curiosity, it comes out, it looks like of the available working time during the last 15 months, assuming a 40 hour week, that represents eight one-thousandths of one per cent of the work time that was allocable to the Port of New Orleans. Now, of course, you can take statistics and run this thing both ways. But, using that, I find a minimal work stoppage. I find none presently in existence. I find no proof by the plaintiff that there is any proof of a present real threat of a work stoppage about to occur in September, 1970, which is the date on which we are trying this case.

The irreparable injury aspect, it just falls short of what I consider irreparable injury. Furthermore, I think the Court is entitled to the benefit of the study and consideration of an arbitrator who will have made detailed findings of facts and conclusions of law and who, presumably, would have fashioned a remedy which is realistic, which all the parties can live with and function with and such a remedy, I am convinced, can be more flexible than a remedy that the Court can order.

Accordingly, my position is at this time like in the LASH Cargo case just like in the other two cases, I think the plaintiff ought to avail themselves to procedures of Paragraph XVII, whether they proceed with 1, 2, 3 arbitration, or whether they go right to the Paragraph D arbitration. I think if the union does not show up to arbitrate, that is no bar to its effect, it can still be held in their abstentia. It can be held in effect of a default judgment. No doubt, it would expedite the hearing if that be the case, or expedite the arbitration. And thereafter,

an award can be made which, as I read the LASH Cargo case, which I handled, now becomes very enforceable by the District Court. It's not a question of jurisdiction, in fact, I find in this case that the disputes here are within the jurisdiction of the deep sea agreement and would be within the jurisdiction of an arbitrator were he to conduct such arbitration.

At this time, therefore, I am going to grant the defendants' motion and I am going to deny the plaintiff's request for a TRO or, a Temporary Restraining Order, preliminary and permanent injunction.

However, I am going to retain jurisdiction in this case and reserve to the plaintiff the right to seek Temporary Restraining Order relief in event during the arbitration this matter would erupt into some further or some bigger problem, some bigger labor problem.

Therefore, I'm going to grant the motion, but retain jurisdiction and order that the the parties abide by the deep sea agreement and engage in arbitration in accordance with the provision of Paragraph XVII.

MR. TAGGART:

Thank you, your Honor.

THE COURT:

In the meantime, then, the Court will stand at recess.

- - - - -

CERTIFICATE

I HEREBY CERTIFY that the preceding Excerpts of testimony given in the above entitled and numbered cause on Friday, September 18, 1970, before the HONORABLE JAMES A. COMISKEY, Judge Presiding, were reported by me in Shorthand (stenograph) and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding.

s/Thomas H. Conrad
THOMAS H. CONRAD,
OFFICIAL COURT REPORTER.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NEW ORLEANS STEAMSHIP ASSOCIATION, a Corporation	)	
versus	)	NO. 70-2554
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO	)	CIVIL ACTION SECTION G

JUDGMENT

The Court having on September 18, 1971, denied plaintiff's request for a temporary restraining order for reasons dictated in the record, accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, General Longshore Workers, I.L.A. Local Union #1418, an Unincorporated Association, and General Longshore Workers, I.L.A. Local Union #1419, an Unincorporated Association, AFL-CIO, and against plaintiff, New Orleans Steamship Association, a Corporation, dismissing said plaintiff's suit at their costs, with the Court retaining jurisdiction.

New Orleans, Louisiana, this 14th day of October, 1971.

s/Benjamin W. Reisch
BENJAMIN W. REISCH, Clerk

APPROVED AS TO FORM:

s/James A. Comiskey
UNITED STATES DISTRICT JUDGE

- - - - -

Eugene C. Taggart, Esq.

Victor H. Hess, Jr., Esq.

Alvin J. Liska, Esq.

Oct 14, 1971